85-404

Supreme Court, U.S.
FILED
AUG 29 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JAMES SHELTON, et aux,

Petitioner,

vs.

STATE OF WASHINGTON, KING COUNTY SUPERIOR COURT, WARREN CHAN, K.D. BECKLEY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT FOR THE STATE OF WASHINGTON

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Counsel Pro Se for
Petitioner

August 20, 1985

13 pp

QUESTION PRESENTED

Whether Japanese Americans are entitled to Due Process such as provided in RCW 60(e) and R.A.P. 5.5?

The Petitioner, James Shelton and spouse Yoshi Yonekawa Shelton doing business as University Village Music Center, a federally qualified minority business, respectfully prays that a writ of certiorari issue to review the judgment order of the Washington State Supreme Court entered in this proceeding on 7 June 1985. In a case of first impression, the State Supreme Court denied petition, affirming State Court judgment that matter be dismissed, and summary judgment be granted to respondents, i.e. that Japs (Japanese Americans) are not entitled to RCW 60(e) & R.A.P. 5.5 due process rights.

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STATUTES AND RULES:

U.S. Const. Art. VI, cl. 2	I
28 U.S.C. 1257 (3)	I
RCW 60 (e)	II,2,8,10,11,13,16,17
R.A.P. 5.5	II,8,10,11,14,16,17

Opinions Below

The judgment letter of the Washington State Supreme Court, not recorded, appears in the Appendix hereto. The judgment of the State Court of Appeals division I at Seattle also appears in the Appendix as well as the King County Superior Court judgment.

Jurisdiction

The judgment of the Washington State Supreme Court was entered on 7 June 1985, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is involked under 28 U.S.C.§ 1257(3).

Constitutional, Statutory and Regulatory Provisions Involved

United States Constitution Article VI, cl. 2:
'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ...shall be the

supreme Law of the Land;...'
Washington State Superior Court Rule: RCW 60(e).*
Washington State Rules of Appellate Proceedure§ R.A.P. 5.5

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* Note: Pursuant to Rule 21 (f) the remaining provisions are lengthy. Accordingly, citation alone is given with pertinent text included in the Appendix hereto.

Statement of the Case

In a 1943 case this Court in Korematsu v. U.S., 323 U.S. 214, 65 Sup. Ct. 193 (1944) held that 120,000 Japs could be removed from the West Coast and placed in consentration camps without trial or due process.

Dissent by Justice Jackson stated: 'The Court for all time has validated the principle of racial discrimination...and of transplanting American citizens. The principle then lies around like a loaded weapon ready for the hand of any authority....'

It is the purpose of this writ to report to this Court that the above Jackson statement has come to pass here in Washington State. It is not possible here in Seattle, for 'Japs' to get a fair hearing in either State courts or at

Federal Agencys, since this Court has ruled that Japs are not entitled to due process rights.

Petitioner presented papers and amended papers to Washington State courts which showed gross discrimination in Washington State and that this discrimination was causal in defrauding petitioners of their RCW 60(e) vacating due process rights. The complaint posed the issue of whether petitioners were entitled to the due process afforded by RCW 60(e) and that violation thereof was a violation of their Constitutional due process rights.

The complaint and propossed amendments was brought to save our minority business from acumulative effect of discriminatory actions by Government powered officers. The State courts on the one hand ruled the complaint failed to state a claim and on the other hand

refused to allow the complaint to be amended.

In addition to the Federal minority directory the said business was also listed as minority business in the Washington State minority directory of 1980 and in fact is the only music store listed in that minority directory.

Dispite some 12 years of continous business and the fact that we were only such business listed in State minority directory, not one single item has been purchased nor has any bid proposals even been received from said State or State supported agencys.

That Washington State minority directory of 1984 no longer lists our business nor are any other minority music businesses listed in that directory and that State dropped us from the directory without any kind of hearing or notice. The sole purpose of which was to

eliminate minority business from public school sales and bids, because we are 'Japs'.

The State of Washington first began discriminating against said business owners in 1942 when State sent troopers and sheriff to remove from state and incarcerate owner Yoshi Shelton because she was American of Japanese desent and even though she was only 9 years old at the time and over 200 miles from the Pacific Ocean coast. (This removal was based on exclusion order 98 which called for removal of Japanese within 100 miles of Pacific coast line).

That said owner was allowed to take only what possessions she could carry in her little arms and was then held under armed guard in cattle pens at Washington/Oregon border for several months without any kind of hearing or process.

That said owner was subsequently entirely removed from State to a wilderness mountain prison camp and held under armed guard there for several years without any kind of hearing or due process or even extradition process and was referred to as a dirty 'Jap', with no rights.

This was not the first time that Japanese Americans were discriminated against: Enactment of the Washington State Anti Alien Land Acts of 1921 and 1923, the Federal Immigration Act of 1924, and the prevailing anti-Japanese climate prompted dozens of families---unable to own land---to give up farming and leave state and others moved to cities, unable to farm, and sought any employment open to them.

As an inevidable consequence and result of the aforesaid, Owner was denied inter alia, her freedom, due process rights, habeus corpus, raised in a concentration camp, grew up in a barracks and prison atmosphere, traumatized by the experience and constantly referred to as a 'Jap' and now we are having our business and minority status interferred with and penalized in court for complaining about the matter.

This State has a long history of anti alien attitudes and laws regarding Japanese, where denying aliens their rights and due process was the norm. In fact this discrimination has grown until today the anti 'Jap' discrimination in Washington State is so bad it has grown like a cancer in various state, city, and county and even Federal agencys here in Seattle, as will be shown hereinthroughout.

Our minority business has filed 16 cases with police for stolen and missing music instrument rentals which authorities totally refuse to take action. One such case involved Internal Revenue Service employee where said employee rented two instruments and then sold same. No action was taken by I.R.S. or local authorities. However, in this instance and another instance we filed Citizens complaint under Justice Criminal Rules but authorities still refused to handle the matter.

In another case Owners/Petitioners filed a state civil action and were given summary judgment where purchaser tried to return a violin after she had damaged same, only to have the judgment stripped away without due process guaranteed by rules covering vacating proceedure, i.e.RCW 60(e). As a result a complaint was filed and issue in instant case was

presented to Supreme Court of Washington that 'ARE MINORITIES ENTITLED TO THE DUE PROCESS PROVISIONS OF VACATING RULES?' The State Supreme Court denied the petition and completely evaded the question of Constitutional due process rights; reference: James Shelton v. State of Washington, et al (7June 1985, Sup. Crt #51613-8), which is the subject of this certiorari request.

As a result of the aforesaid we conclude our minority business was targeted by State officials where an anti 'Jap' discrimination movement thwarted our due process rights to the vacating process of RCW 60(e), removal of our business from the minority directory without notice or hearing, and subsequent and denying us access to R.A.P. 5.5 process as well as refusing to do

business with us because of our minority status and refusing to prosecute some 16 cases where instruments were taken from us. As a result our business and sales are at a stand still and their actions are damaging our free trade. Additionally, not only are we without state process as stated but state courts even refuse to allow us access to the elected appellate judges and proceedures. The State refused to comply with rules even when the state appeals Clerk directed them to do so. So that even when officials such as the court clerks try to thwart discrimination they are frustrated by State and County officials refusal to comply with rules in minority cases.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Has Decided An Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court And Has Decided Such Federal Question In A Way In Conflict With The Applicable Decisions Of This Court.

The decision of the court below, that petitioner is not entitled to hearing prior to vacating a judgment and that we (minority Japanese) should recognize that due process such as RCW 60(e) and R.A.P. 5.5 are only for aristocrats; is predicated upon a complete misconception of the basic United States due process rights and law which Congress so carefully enacted to offset the awesome powers given to state courts.

Respondents violation of our due

process rights in stripping our business from the state minority directory without a hearing and refusing to do business with us because of our minority status, are clearly violations of our Federally protected rights.

> Procedural due process requires that parties whose rights are to be affected are entitled to be heard at a meaningful time, Fuentes v. Shevin, (1972) 407 U.S. 67, 92 S.Ct. 1983

Respondents violation of our due process rights where absolutely none of the vacating RCW 60 (e) and R.A.P. 5.5 proceedure was followed and where we were refused even right to amend, led ultimately to loss of our due process rights.

> ...there are constitutional limitations on power of courts, even in aid of their own valid process, to dismiss action without affording party opportunity for hearing on merits of his cause. Society Int. Pour Participations

v. Rogers, 357 U.S. 197

Respondents violation of the rules and due process was clear and unequivocal and deprived us of that process.

> Violation of a statute or regulation constitutes negligence as a matter of law when violation results in injury to a member of the class of persons intended to be protected by the legislation and when the harm is of the kind which the statute or regulation was intended to prevent. Stachniewecz v. Mar-Cam Corp., (1970) 495 F.2d 436

The respondents deliberately sought to deprive us of our due process rights.

> No man in this country is so high that he is above the law. No officer os the law may set that law at defiance with impunity. U.S. v. Claiborne, ___ F.2d___, (9th Cir. 1984)

Violation of our due process rights was an unconscionable act motivated by racial discrimination against this minority small family business.

No where in this case did parties waive their right to hearing by duly elected judges, but the court cannot nevertheless evade the federally protected rights issue of due process which we were denied.

> The Civil Rights Act was intended to establish paramount importance in our federal scheme of constitutionally protected rights. Duke v. State of Texas, (1971) 327 F.Supp 1218

The final document denying the RCW 60(e) due process rights was judgment of 24 November 1981, when 'Jap' motion for reconsideration of violation RCW 60(e) due process was denied by Washington Appeals Court (See Shelton v. Farkas, 30 Wn.App. 549 (1981). The instant complaint was lodged on 25 October 1983 and is therefore a timely issue pursuant to standards set by 9th circuit court. Jackson v. Hayakawa, 695 F.2d 1121 (1979). Rose v. Rinaldi, 654 F.2d 547 (1981).

Respondents refusal to comply with court instructions on Rule RAP 5.5 was clearly an act of bad faith at the very least and denied litigants access to this process on the case.

Petitioner clearly presented the federal constitutionally protected issue of due process, to the State Supreme Court. In fact petitioner specifically requested court to answer each issue rather than issue a general judgment. But, the State Supreme Court completely evaded the due process issues.

On
petition for certiorari to review a decree of a state court as denying or not duly recognizing a federal right set up therein, it is the Supreme Court's province to inquire, not only whether such right was denied in direct terms, but also whether it was denied in substance and effect by interposing a non-federal ground of decision without fair support.
Ancient Egyptian Arabic Order of Nobles

of the mystic Shrine v. Michaux, 49 S.Ct. 485, 279 U.S. 737, 73 L.Ed.931

II Millions Of Individuals,Thousands Of Minorities And Hundreds of Cases Nationwide Are Affected By The Erroneous Statutory Interpretation Of The Courts Below.

The importance of the case at bar is underscored and the logic of granting the writ of certiorari bolstered by the fact that many individuals and businesses are involved or will be affected by the erroneous statutory interpretation below.

Maintainance of minority businesses requires agencys make a share of their purchases from these businesses, and not eleminate them from the state listing without a hearing or process.

But certainly minoritys are at the very least entitled to the minimumal due

process assured to all by RCW 60(e) and RAP 5.5. The Washington State Supreme Court completely evaded this issue.

We are a minority business and should have been given preferential treatment if anything. But lets look at history:

Japanese were first run out of this State by enactment of the Washington State Anti Alien Land Acts of 1921 and 1923 when the courts did nothing to protect these minorities.

Later, the State seized upon Exclusion Order 98, which only called for removal within 100 miles of Pacific, to remove all 'Japs' from this State, and again the courts did nothing to protect these minorities from these acts against them.

Now, officials are again engaged in running 'Japs' out of state or at least out of business, by missuse of the RCW

60(e) and RAP 5.5 proceedures, and again the courts do nothing to stop this abuse of these minorities and the process. Japanese citizens in this state deserve fair treatment. A ruling by this Court will assure just treatment of these citizens in the future, remove any doubt as to whether they are entitled to due process, and restore the equal protection to these minorities.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully Submitted,
James Shelton Pro Se
4733 Village Pl. N.E.
Seattle, Wa. 98105
(206) 525-6200
for Petitioner

APPENDIX

The Suppreme Court
State of Washington
Olympia 98504

June 7, 1985

Mr. James Shelton
4733 Village Pl.N.E.
Seattle, Wash. 98105

Re: Supreme Court No. 51613-8
James Shelton d/b/a/ University Music Center v. State of Washington, King County Superior Court, et al.
Court of Appeals No. 14191-1-I.

The above entitled petition for review was considered by the Court on its June 7, 1985, petition for review calendar.

The petition was denied by order number 137/172 filed on June 7, 1985.

Very Truly yours,

Reginald N. Shriver
Supreme Court Clerk

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

NO. 14191-1-I

JAMES SHELTON, d/b/a/
University Music Center,

Plaintiff,

v.

STATE OF WASHINGTON, et al,

Respondents.

ORDER DENYING MOTION TO MODIFY

James Shelton has filed a motion to modify a commissioner's ruling granting a motion on the merits and affirming the decision of the trial court. A panel of the court has considered the motion pursuant to In re Marriage of Wolfe, 99 Wn.2d 531, 663 P.2d 469 (1983) and RAP 17.7 and has determined that the motion should be denied for the reasons set forth in the commissioner's ruling. Now,

therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 25 day of March, 1985.

signed ringold

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

No. 14191-1-I
King County No. 83-2-16293-9

JAMES SHELTON, d/b/a/
University Music Center,

v.

STATE OF WASHINGTON, et al,

Respondents.

MANDATE

The State of Washington to: The Superior Court of the State of Washington in and for King County

This is to certify that the Court of Appeals of the State of Washington, Division I, considered and granted a motion on the merits in the above entitled case on February 4, 1985. Accordingly, this cause is mandated to the Superior Court from which this appeal was taken for further proceedings in

accordance with the determination of that court.

Mandate after motion for dismissal granted.

signed richard d. taylor

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 83-2-16293-9

JAMES SHELTON, d/b/a/ University Village Music Center,

Plaintiff,

v.

STATE OF WASHINGTON, KING COUNTY SUPERIOR COURT OF WARREN CHAN, WARREN CHAN, and KENNETH D. BECKLEY,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DISMISSING CLAIM AGAINST KENNETH BECKLEY

I.

HEARING

1.1 Hearing Date. December 20,1983.

1.2 Appearances. Plaintiff appeared in person. Defendant appeared by his counsel Thomas C. McKinnon.

1.3 Purpose. To consider the motion of

the plaintiff for summary judgment.

1.4 Evidence. Affidavits of parties filed in this action.

II.

FINDINGS

The Court, having considered the evidence and argument of counsel, finds:

2.1 No Issue. There is no genuine issue as to any material fact in this action.

2.2 Judgment. Defendant Kenneth D. Beckley is entitled to judgment as a matter of law.

2.3 Frivolous Lawsuit. Plaintiff's lawsuit is frivolous and advanced without reasonable cause.

III.

ORDER

On the basis of the forgoing findings, it is Ordered

3.1 Plaintiff's motion for summary judgment is denied.

3.2 That judgment be entered herein in

favor of the Defendants, Kenneth D. Beckley, dismissing Plaintiff's Complaint as to him with prejudice. and granting judgment for defendant in the amount of $5000.00.

Dated this 20th day of December, 1983.

signed judge hunter

IN THE SUPERIOR COURT
FOR THE STATE OF WASHINGTON
FOR KING COUNTY

No. 83-2-16293-9

JAMES SHELTON,

Plaintiff,

vs.

STATE OF WASHINGTON, et al.,

Defendants.

ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT

THIS MATTER came on regularly before the undersigned judge, upon the Motion of Plaintiff to Amend his Complaint. This court having considered the arguments of Mr. Shelton and of counsel for defendants, the motion and defendant's response, and the files and records in this case, hereby finds that it has no jurisdiction to grant the relief requested. Now therefore,

IT IS ORDERED that Plaintiff's Motion to Amend his Complaint is DENIED.

DONE IN OPEN COURT this 5 day of December, 1984.

singed judge

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all paarties to the action or proceeding who may be affected thereby to appear and

show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide;

RULE 5.5 CIVIL APPEAL STATEMENT AND SETTLEMENT CONFERENCE IN COURT OF APPEALS

(e) Notice of Settlement Conference.

The Chief Judge of the Court of Appeals will determine if one or more settlement conferences are appropriate in each civil appeal. The clerk of the Court of Appeals will notify each party if a settlement conference is to be held. The notice will specify the date, time, and place of the conference; the name of the judge or judge pro tempore who will conduct the conference; and whether the parties are required to attend the conference.

(f) Stay Pending Settlement Conference.

Unless the notice of the settlement

conference states otherwise, a party who has received a notice of settlement conference is not required to take any further steps to complete the review until the settlement conference is concluded. After the settlement conference is completed, the clerk or a commissioner or settlement judge will establish the dates within which the remaining steps in the review should be completed.

(g) Attendance at Settlement Conference.

The attorney for each party, and the party if the notice requires it, must attend the settlement conference on the date, time, and place specified in the clerk's notice. Those in attendance should be ready to seriously consider the possibility of settlement, limitations of the issues to be presented for review, and other matters which may promote the prompt and fair disposition of the

appeal.

(h) Settlement Conference Order.

If the parties agree to settle the case, limit the issues, or to other matters to promote the prompt and fair disposition of the appeal, the settlement judge may enter an order consistent with that agreement. If the settlement conference order fully settles the case, the clerk of the Court of Appeals will immediately issue the mandate to the trial court with directions to enter judgment as indicated in the order. In all other cases the order is binding on the parties during the review proceeding, unless the appellate court otherwise directs on its own initiative or on maotion of a party for good cause shown and on those terms the appellate court deems appropriate.

(i) Sanctions.

If a party or counsel for a party

fails to comply with this rule or to comply with a settlement conference order, the Court of Appeals may impose sanctions or dismiss the review proceeding as provided in Rule 18.9.

RULE 18.9 VIOLATION OF THE RULES

(a) Sanctions.

The appellate court on its own initiative or on motion of a party may order a party or counsel who uses these rules for purposes of delay or who fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply.